

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 873*

Short Title: NC Consumer Fireworks Safety Act. (Public)

Sponsors: Representatives Brody, Hardister, Szoka, and Brockman (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

April 25, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE SALE, POSSESSION, AND DISCHARGE OF CERTAIN
3 CONSUMER FIREWORKS AND TO LEVY AN EXCISE TAX ON THE SALES OF
4 CONSUMER FIREWORKS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 14-410 reads as rewritten:

7 **"§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; exceptions; license**
8 **required; sale to persons under the age of ~~16~~18 prohibited.**

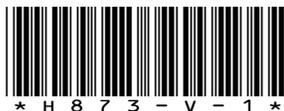
9 (a) Except as otherwise provided in this section, it shall be unlawful for any individual,
10 firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess,
11 receive, advertise, use, handle, exhibit, or discharge any pyrotechnics of any description
12 whatsoever within the State of North Carolina.

13 (a1) It shall be permissible for pyrotechnics to be exhibited, used, handled,
14 manufactured, or discharged within the State, provided all of the following apply:

15 (1) The exhibition, use, or discharge is at a concert or public exhibition.

16 (2) All individuals who exhibit, use, handle, or discharge pyrotechnics in
17 connection with a concert or public exhibition have completed the training
18 and licensing required under Article 82A of Chapter 58 of the General
19 Statutes. The display operator or proximate audience display operator, as
20 required under Article 82A of Chapter 58 of the General Statutes, must be
21 present at the concert or public exhibition and must personally direct all
22 aspects of exhibiting, using, handling, or discharging the pyrotechnics.
23 Notwithstanding this subdivision, the display operator for the University of
24 North Carolina School of the Arts may appoint an on-site representative to
25 supervise any performances that include a proximate audience display
26 subsequent to the opening performance, provided that the representative (i)
27 is a minimum of 21 years of age and (ii) is properly trained in the safe
28 discharge of proximate audience displays.

29 (3) The display operator has secured written authority under G.S. 14-413 from
30 the board of county commissioners of the county, or the city if authorized
31 under G.S. 14-413(a1), in which the pyrotechnics are to be exhibited, used or
32 discharged. Written authority from the board of commissioners or city is not
33 required under this subdivision for a concert or public exhibition provided
34 the display operator has secured written authority from (i) The University of
35 North Carolina or the University of North Carolina at Chapel Hill under



1 G.S. 14-413, and pyrotechnics are exhibited on lands or buildings in Orange
2 County owned by The University of North Carolina or the University of
3 North Carolina at Chapel Hill or (ii) the University of North Carolina School
4 of the Arts and pyrotechnics are exhibited on lands or in buildings owned by
5 the State and used by the University of North Carolina School of the Arts.

6 (a2) Notwithstanding any provision of this section, it shall not be unlawful for a common
7 carrier to receive, transport, and deliver pyrotechnics in the regular course of its business.

8 (a3) The requirements of this section apply to G.S. 14-413(b) and G.S. 14-413(c).

9 (a4) It shall be permissible for pyrotechnics to be exhibited, used, handled,
10 manufactured, or discharged within the State as a special effect by a production company, as
11 defined in G.S. 105-164.3(30), for a motion picture production, if the motion picture set is
12 closed to the public or is separated from the public by a minimum distance of 500 feet.

13 (a5) It shall be permissible for pyrotechnics to be exhibited, used, handled,
14 manufactured, or discharged within the State for pyrotechnic or proximate audience display
15 instruction consisting of classroom and practical skills training approved by the Office of State
16 Fire Marshal.

17 (a6) It shall be permissible for pyrotechnics that are consumer fireworks to be advertised,
18 sold, used, transported, handled, or discharged within the State, provided the advertising, sale,
19 use, transportation, handling, or discharge comply with Part 2 of Article 82A of Chapter 58 of
20 the General Statutes.

21 (b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any
22 individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414(2),
23 (3), (4)c., (5), or (6) to persons under the age of ~~16~~18.

24 (c) The following definitions apply in this Article:

25 (1) Concert or public exhibition. – A fair, carnival, show of any description, or
26 public celebration.

27 (1a) Consumer fireworks. – Defined in G.S. 58-82A-80(1), unless otherwise
28 excluded by the Commissioner under the authority granted in
29 G.S. 58-82A-105.

30 (2) Display operator. – An individual issued a display operator license under
31 G.S. 58-82A-3.

32 (3) State Fire Marshal. – Defined in G.S. 58-80-1."

33 **SECTION 2.** G.S. 58-82A-1 through G.S. 58-82A-55 are recodified as Part 1 of
34 Article 82A of Chapter 58 of the General Statutes, to be entitled:

35 "Part 1.

36 "Display Pyrotechnics Training and Permitting."

37 **SECTION 3.** Article 82A of Chapter 58 of the General Statutes is amended by
38 adding a new Part to read:

39 "Part 2.

40 "Consumer Fireworks.

41 "**§ 58-82A-75. Purpose.**

42 The sale, use, handling, or discharge of consumer fireworks shall be permitted only in
43 compliance with the provisions of this Part.

44 "**§ 58-82A-80. Definitions.**

45 The following definitions apply in this Part:

46 (1) Consumer fireworks. – Any small fireworks device designed primarily to
47 produce visible effects by combustion or deflagration that (i) is categorized
48 as a 1.4G firework device under Standard 87-1 of the American Pyrotechnics
49 Association and (ii) complies with the construction, chemical composition,
50 and labeling regulations of the United States Consumer Product Safety

- 1 Commission, as set forth in the Code of Federal Regulations, volumes 16
2 and 49.
- 3 (2) Consumer fireworks distributor. – A person or corporation owning or
4 otherwise controlling a facility where consumer fireworks are stored or
5 otherwise maintained for distribution to fireworks retailers permitted under
6 this Part.
- 7 (3) Consumer fireworks permanent retailer. – An individual or corporation that
8 sells only consumer fireworks, ground and handheld sparkling devices and
9 novelties, and related items from a consumer fireworks retail establishment.
- 10 (4) Consumer fireworks retail establishment. – A freestanding retail facility
11 operated by a consumer fireworks permanent retailer.
- 12 (5) Fireworks retailer. – A consumer fireworks permanent retailer, sparkling
13 device temporary retailer, or an incidental sparkling device retailer permitted
14 under this Part.
- 15 (6) Fireworks safety and education trainer. – A person who has completed
16 training on the function, safe handling, and best practices for the safe use of
17 all categories of consumer fireworks and annually registers with the
18 Department. The Commissioner shall (i) create a training course or identify
19 existing training courses that meet the requirements of this subdivision and
20 (ii) create and maintain a listing of persons meeting the requirements of this
21 subdivision. The Department may issue rules to implement this subdivision,
22 including reasonable requirements for verification or certification that
23 persons have met the training requirements of this subdivision. The
24 Department may also charge a fee to cover the costs of implementing this
25 subdivision.
- 26 (7) Ground and handheld sparkling devices and novelties or sparkling devices. –
27 Consumer fireworks that do not rise into the air, do not fire inserts or
28 projectiles into the air, and do not explode or produce a report, as the
29 Commissioner, through the Office of the State Fire Marshall, may specify by
30 rule. The specification of sparkling devices under this subdivision shall
31 substantially follow the definition of these devices under Standard 87-1 of
32 the American Pyrotechnics Association, unless the Commissioner finds there
33 is a substantial threat to public safety that justifies a divergence from that
34 standard.
- 35 (8) Incidental sparkling device retailer. – An individual or corporation selling
36 only ground and handheld sparkling devices and novelties that is not a
37 consumer fireworks permanent retailer or a sparkling device temporary
38 retailer as defined by this section.
- 39 (9) NFPA standards. – Standard 1124 of the National Fire Protection
40 Association, 2006 edition, as it applies to the retail sale or distribution of
41 consumer fireworks, except as otherwise specified by this Part.
- 42 (10) Novelties. – Any wire or wooden stick sparklers, snaps, party poppers,
43 snakes and glow worms, and toy smoke devices containing five grams or
44 less of polytechnic composition.
- 45 (11) Permitting authority. – A county or city operating a consumer fireworks
46 sales permitting program approved by the Commissioner under
47 G.S. 58-82A-90.
- 48 (12) Public space. – Any building or area open to the public, whether privately or
49 publicly owned. Public space includes, but is not limited to, bars, restaurants,
50 theaters, stadiums, arenas, retail establishments, and shopping malls.

1 (13) Sparkling device retail stand. – A temporary or permanent building or
2 structure with a floor area not greater than 800 square feet, other than tents,
3 canopies, or membrane structures, that is used for the temporary retail
4 display and sale of ground and handheld sparkling devices and novelties to
5 the public. Stands may include, but are not limited to, buildings, temporary
6 structures constructed from plywood, sheet metal, or similar materials,
7 manufactured buildings, trailers, and shipping containers.

8 (14) Sparkling device temporary retailer. – An individual or corporation that sells
9 ground and handheld sparkling devices and novelties from a sparkling
10 device retail stand or a sparkling device tent.

11 (15) Sparkling device tent. – A tent, canopy, or membrane structure with a floor
12 area not greater than 1,500 square feet that is not permanently installed and
13 that is used for the temporary retail display and sale of ground and handheld
14 sparkling devices and novelties to the public.

15 **"§ 58-82A-85. Possession and use of consumer fireworks.**

16 (a) General Allowance. – Except as provided in subsection (b) of this section, the
17 possession and use of consumer fireworks is allowed in the State, subject to the following
18 conditions:

19 (1) The person possessing or using the consumer fireworks must be at least 18
20 years old.

21 (2) The use of consumer fireworks may occur only between the hours of 10:00
22 A.M. and 10:00 P.M., with the following exceptions:

23 a. On July 4, use is permitted until 12:00 A.M.

24 b. On December 31 and the following January 1, use is permitted from
25 8:00 A.M. on December 31 until 12:30 A.M. on January 1.

26 (3) The discharge of consumer fireworks is prohibited in the following
27 locations:

28 a. In or on the premises of a public or private primary or secondary
29 school, unless the person has written permission from the school.

30 b. On the campus of a college or university, unless the person has
31 received written authorization from the college or university.

32 c. Within 1,500 feet of a hospital, veterinary hospital, licensed child
33 care center, fireworks retailer, fireworks distributor, gas station, or
34 bulk storage facility for petroleum products or other explosive or
35 flammable substances.

36 (4) The possession or discharge of consumer fireworks is prohibited in or on the
37 premises of any public park or public space, except as otherwise permitted
38 by the person, State agency, or unit of local government owning or otherwise
39 controlling the park, property, or space.

40 **"§ 58-82A-90. Sale of consumer fireworks; permit required.**

41 (a) Permit Requirement. – No person shall sell consumer fireworks or ground and
42 handheld sparkling devices and novelties in this State unless the person holds a permit issued
43 under this Part from a county or city authorized by the Commissioner to issue retail fireworks
44 and sparkling device permits. The Commissioner shall issue rules to implement this section,
45 including rules for the approval of local consumer fireworks sales and sparkling device sales
46 permitting programs funded and operated by counties or municipalities within their jurisdiction.
47 Nothing in this section is intended to require a county or city to issue consumer fireworks
48 permits or sparkling device permits. Permits for operation of a fireworks retailer or a sparkling
49 device retailer shall be posted in a location visible to members of the general public visiting the
50 retailer. The permitting authority shall issue a permit to a person who meets the following
51 conditions:

- 1 (1) Is 21 years of age or older.
2 (2) Complies with all of the requirements of this Part.
3 (3) Has not been convicted of a felony and has not received a pardon.
4 (4) Has not been convicted of an offense for a violation of State or federal law
5 or been found in violation of any municipal ordinance involving fireworks or
6 explosives within five years prior to the date of the application for the
7 permit.
8 (5) Maintains at all times public liability and product liability insurance with
9 minimum coverage limits of five million dollars (\$5,000,000) to cover
10 losses, damages, or injury that might occur as a result of the person selling
11 consumer fireworks.
12 (6) Submits the application for a permit no less than 120 days prior to the date
13 the applicant proposes to begin sales of consumer fireworks under this Part.
14 (7) Provides a lease or evidence of ownership of the site of the proposed
15 fireworks retailer for no less than the duration of the permit.
16 (b) No Transportation Exclusions. – No county or city may restrict or exclude the
17 transportation of consumer fireworks across or through the county or city. Nothing in this
18 subsection is intended to prevent reasonable transportation-related restrictions applicable to all
19 vehicles or a class of vehicles regardless of cargo, such as vehicle weight limits or truck route
20 restrictions in accordance with U.S. Department of Transportation regulations.
21 (c) Requirements for All Fireworks Retailers. – Any permit issued for a fireworks
22 retailer or consumer fireworks distributor shall contain, at a minimum, the following
23 conditions:
24 (1) Standards. – The permittee must comply with (i) NFPA standards and (ii)
25 applicable local zoning and land use rules.
26 (2) Employees. – All employees of the permittee engaged in the sale of
27 fireworks or sparkling devices must be at least 18 years of age.
28 (3) Fire suppression devices. – The permittee must maintain on the premises a
29 minimum of two portable fire extinguishers with a 2A rating. The fire
30 extinguishers shall be located in two different locations within the premises
31 of the retailer, and at least one of the extinguishers shall be of the
32 pressurized water type, subject to additional provisions in NFPA standards.
33 (4) Required signs. – The permittee shall post signs prohibiting smoking on the
34 premises and discharge of fireworks and sparkling devices within 1,500 feet
35 of the premises in a manner specified by the Commissioner.
36 (d) Consumer Fireworks Permanent Retailer. – In addition to the restrictions set forth in
37 subsection (a) of this section, a permit issued for a consumer fireworks permanent retailer shall
38 contain, at a minimum, the following conditions:
39 (1) Setbacks. – Areas within 20 feet of the retailer's premises shall be kept free
40 of dry vegetation and other combustible debris. The retailer may not be
41 located within 300 feet of the following:
42 a. Retail establishments dispensing flammable or combustible liquids,
43 flammable gas, or flammable liquefied gas.
44 b. Above-ground storage tanks storing flammable or combustible
45 liquids, flammable gas, or flammable liquefied gas.
46 c. Propane dispensing stations.
47 (2) Smoking prohibited. – Smoking shall not be permitted inside of the retailer's
48 premises, subject to the retailer's building location, layout, and restrictions.
49 (3) Egress requirements. – Means of egress, including, but not limited to, aisles,
50 doors, and exit discharge, shall be clear at all times when the retailer is open
51 to the public, and aisles must be at least 48 inches in width.

- 1 (4) Fire safety. – The retailer shall create and maintain a fire safety and
2 evacuation plan in a form specified and approved by the Commissioner.
3 (5) Training. – No less than two management or supervisory employees of each
4 permittee subject to this subsection shall be Fireworks Safety and Education
5 Trainers. Fireworks Safety and Education Trainers shall be responsible for
6 the annual training of all employees on the function, safe handling and best
7 practices regarding the safe use of all categories of consumer fireworks.
8 Such training shall be documented on forms approved by the Commissioner,
9 and be readily available at the request of the Commissioner.

10 (e) Incidental Sparkling Device and Sparkling Device Temporary Retailer. – A permit
11 issued to an incidental sparkling device retailer or a sparkling device temporary retailer shall
12 allow the sale of ground and handheld sparkling devices and novelties only, and shall require
13 compliance with NFPA standards applicable to sales of ground and handheld sparkling devices
14 and novelties.

15 (f) Nothing in this section is meant to override any fire code applicable to a structure
16 regulated by this Part. If the fire code imposes a more stringent requirement, the fire code
17 requirement will apply instead of the standards imposed by this section.

18 **§ 58-82A-95. Permit fees.**

19 The permitting authority may charge an applicant for a permit under G.S. 58-82A-90 the
20 following annual fees:

- 21 (1) One hundred dollars (\$100.00) for a sparkling device temporary retailer or
22 an incidental sparkling device retailer permit.
23 (2) Five thousand dollars (\$5,000) for a consumer fireworks permanent retailer
24 permit.
25 (3) Five thousand dollars (\$5,000) for a consumer fireworks distributor permit.
26 (4) Twenty-five dollars (\$25.00) for the renewal of a sparkling device temporary
27 retailer or an incidental sparkling device retailer permit.
28 (5) Two thousand five hundred dollars (\$2,500) for the renewal of a consumer
29 fireworks permanent retailer permit or a consumer fireworks distributor
30 permit.

31 **§ 58-82A-100. Power of Commissioner to exclude certain categories of pyrotechnics**
32 **from definition of consumer fireworks.**

33 The Commissioner, through the Office of State Fire Marshal and in consultation with the
34 State Fire and Rescue Commission, may by rule exclude certain types or categories of
35 pyrotechnics otherwise meeting the definition of "consumer fireworks" from the provisions of
36 this Part upon a finding that the type or category of pyrotechnic presents a significant and
37 widespread risk of death, serious bodily injury, or substantial damage to public or private
38 property. Exclusion of any type or category of pyrotechnics pursuant to this section must be
39 evidence-based.

40 **§ 58-82A-105. Prohibition of consumer fireworks.**

41 During periods of declared hazardous forest fire conditions as referenced in G.S. 106-946,
42 the Commissioner in consultation with the North Carolina Forest Service is authorized to
43 prohibit all use of consumer fireworks otherwise permitted by this Part in all or part of the
44 State. The Commissioner shall issue a press release containing relevant details of the
45 prohibition to news media serving the area affected.

46 **§ 58-82A-110. Civil and criminal penalties for violations.**

47 (a) G.S. 14-415 and G.S. 58-2-70 shall apply to any person violating any of the
48 provisions of this Part.

49 (b) The Commissioner, a State law enforcement officer, a municipal law enforcement
50 officer, a code enforcement officer, or a fire safety official may petition the district court to

1 seize or remove, at the expense of the permit holder, fireworks sold, offered for sale, stored,
2 possessed or used in violation of this Part.

3 (c) The Commissioner or a permitting authority may suspend or revoke the license
4 issued under this Part of a permittee found guilty of (i) selling fireworks or explosives not
5 defined in Chapter 3 of Standard 87-1 of the American Pyrotechnics Association or (ii) selling
6 fireworks without a valid permit issued under this Part. In addition to or instead of suspending
7 or revoking the permit, the Commissioner or permitting authority may order the payment of a
8 civil penalty as set forth in subsection (d) of this section.

9 (d) If the Commissioner or a local permitting authority orders the payment of a civil
10 penalty pursuant to subsection (c) of this section, the penalty shall not be less than one
11 thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). In determining the
12 amount of the penalty, the Commissioner or local permitting authority shall consider the degree
13 and extent of harm caused by the violation, the amount of money that inured to the benefit of
14 the violator as a result of the violation, whether the violation was committed willfully, and the
15 prior record of the violator in complying or failing to comply with laws, rules, or orders
16 applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil
17 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty
18 under this section shall be in addition to payment of any other penalty for a violation of the
19 criminal laws of this State.

20 **"§ 58-82A-115. Prohibited activities.**

21 (a) The permitting authority, by majority vote, may suspend the permit of a person
22 authorized to sell consumer fireworks or sparkling devices for engaging in any of the following
23 prohibited activities:

- 24 (1) Selling consumer fireworks or sparkling devices within the State without a
25 valid permit.
- 26 (2) Selling consumer fireworks or sparkling devices to a person who appears to
27 be under the influence of alcohol or drugs.
- 28 (3) Knowingly aiding or assisting in procuring, furnishing, giving, selling, or
29 delivering consumer fireworks or sparkling devices to a person under the age
30 of 18. It is an affirmative defense to any disciplinary action taken pursuant to
31 this subdivision that the permit holder procured, furnished, gave, sold, or
32 delivered consumer fireworks or sparkling devices to a person under the age
33 of 18 in reasonable reliance upon fraudulent proof of age presented to the
34 permit holder.

35 A person whose permit has been suspended under this section shall receive a hearing before
36 the applicable body within 10 days of the suspension. If the suspension is upheld, the person
37 may seek judicial review in superior court."

38 **SECTION 4.(a)** Article 6 of Chapter 153A of the General Statutes is amended by
39 adding a new section to read:

40 **"§ 153A-130.1 Use and sales of consumer fireworks.**

41 Notwithstanding G.S. 153A-128, a county may by ordinance regulate the use and sales of
42 consumer fireworks and sparkling devices to the public pursuant to Part 2 of Article 82A of
43 Chapter 58 of the General Statutes, provided that the ordinance shall not apply to a city located
44 within the county that has adopted an ordinance in accordance with G.S. 160A-190.1."

45 **SECTION 4.(b)** Article 8 of Chapter 160A of the General Statutes is amended by
46 adding a new section to read:

47 **"§ 160A-190.1 Use and sales of consumer fireworks.**

48 Notwithstanding G.S. 160A-183, a city may by ordinance regulate the use and sales of
49 consumer fireworks and sparkling devices to the public pursuant to Part 2 of Article 82A of
50 Chapter 58 of the General Statutes."

